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Case #20CV372366
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA

11
12 CALIFORNIA DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING, an agency
13 of the State of California,

14 Plaintiff,

15 v.

16 CISCO SYSTEMS, INC., a California
Corporation; SUNDAR IYER, an individual;
17 RAMANA KOMPELLA, an individual,

18 Defendants.

Case No. 20CV372366

**DECLARATION OF JOSEPH C.
LIBURT IN SUPPORT OF
DEFENDANT CISCO SYSTEMS,
INC.'S DEMURRERS, MOTION TO
STRIKE PORTIONS OF PLAINTIFF'S
COMPLAINT, AND MOTION TO
COMPEL ARBITRATION AND STAY
PROCEEDINGS**

Date: TBD March 9, 2021
Time: TBD 9:00 AM
Dept.: 6
Judge: Honorable Maureen A. Folan

Complaint Filed: October 16, 2020

1 I, Joseph C. Liburt, declare:

2 1. I am an attorney duly admitted to practice before the courts of the State of
3 California and am a partner in the law firm of Orrick, Herrington & Sutcliffe LLP, attorneys of
4 record for Defendant Cisco Systems, Inc. I make this declaration in support of Defendant's
5 Demurrers, Motion to Strike, and Motion to Compel Arbitration. I have personal knowledge of
6 the matters contained in this declaration.

7 2. Plaintiff California Department of Fair Housing and Employment originally filed
8 this lawsuit in the United States District Court for the Northern District of California on June 30,
9 2020. *California Department of Fair Employment and Housing v. Cisco Systems, Inc., et al*, 5:20-
10 cv-04374 EJD ("Federal Action"). Attached as **Exhibit A** to this declaration is a true and correct
11 copy of the Complaint filed in the Federal Action. DFEH served Cisco with the Complaint in the
12 Federal Action on September 28, 2020. Attached as **Exhibit B** to this declaration is a true and
13 correct copy of the proof of service on Cisco of the Complaint in the Federal Action.

14 3. On October 15, 2020, my colleague Carolina Garcia emailed DFEH's counsel to
15 request that the DFEH stipulate to arbitration and dismiss the Federal Action. DFEH's counsel
16 Melanie Proctor responded and requested John Doe's arbitration agreement, which Ms. Garcia
17 provided on October 16, 2020. Ms. Proctor also requested on October 16 that Cisco provide
18 authorities for its request that Cisco stipulate to arbitration. Less than three hours after Ms. Garcia
19 provided the unredacted agreement and before Cisco could respond to DFEH's request for
20 authorities, DFEH voluntarily dismissed the Federal Action on October 16, 2020, removed the
21 Title VII claims, and refiled the Complaint in this action ("State Court Action") on the same date.
22 Attached as **Exhibit C** to this declaration is a true and correct copy of the voluntary dismissal
23 under Federal Rule of Civil Procedure 41(a) that DFEH filed in the Federal Action. The only
24 material change from the Federal Action complaint to the State Court Action complaint is that
25 DFEH deleted the three Title VII claims that were pled in the Federal Action but not in the State
26 Court Action. Both complaints contain the same five FEHA causes of action.

27 4. DFEH has never responded to Cisco's request that it stipulate to arbitration.
28 Attached as **Exhibit D** are true and correct copies of the parties' meet and confer correspondence

1 in the Federal Action.

2 5. Following the filing of this State Court Action on October 16, 2020, Cisco
3 attempted to meet and confer regarding these demurrers and motion to strike in compliance with
4 California Code of Civil Procedure §§ 430.41 and 435.5. On October 22, 2020, I emailed DFEH
5 asking to meet and confer telephonically about Cisco’s intended demurrers and motion to strike.
6 DEH’s counsel Melanie Proctor responded to my email by stating that she was “not available” to
7 have a phone call until the following week, and asking Cisco to provide a written explanation of
8 its anticipated bases for demurring and moving to strike. Ms. Garcia emailed a written
9 explanation of grounds for the motions to Ms. Proctor that same day. Ms. Proctor did not respond
10 to Ms. Garcia’s email or provide timely availability for the parties to meet and confer by
11 telephone. Counsel for the individual defendants Andrew Esler also emailed Ms. Proctor on
12 October 22 and stated the grounds for the individual defendants’ anticipated motions. Among
13 other things, Mr. Esler notified Ms. Proctor that there would be a motion to strike DFEH’s
14 improper use of a pseudonym (i.e., the “John Doe” designation). Ms. Proctor did ask whether
15 Cisco still intended to move to compel arbitration. I responded that we did. I have received no
16 answer from Ms. Proctor as to whether DFEH will stipulate to arbitration.

17 6. I was copied on an October 25, 2020 email from the individual defendants’
18 counsel Alex Hernaez to Ms. Proctor asking if counsel for the parties could meet and confer by
19 telephone on October 26, 2020 regarding all of the defendants’ demurrers and motions. On
20 October 26, Ms. Proctor again declined, stating that she was unable to meet and confer that day,
21 but that she could meet on October 29 or 30. On October 28, Ms. Garcia responded on behalf of
22 Defendants and agreed to meet and confer on October 29. However, despite having offered this
23 date, Ms. Proctor yet again declined to meet and confer with Defendants, stating that “my
24 schedule for the week has filled up.” In the same email, Ms. Proctor offered to meet and confer on
25 November 3 or November 4. On November 2, Ms. Garcia responded, requesting to speak on
26 November 3. On November 2, Ms. Proctor again declined, stating that “my schedule is a moving
27 target”. (By this point, it was obvious to me that it was indeed a moving target, and that we were
28 unlikely ever to hit that target.) Nevertheless, Ms. Garcia promptly provided additional

1 availability. Hours later on November 2, the DFEH served Cisco with a Motion to Proceed Using
2 a Fictitious Name. Attached hereto as **Exhibit E** is a true and correct copy of the referenced
3 email correspondence with Ms. Proctor in the State Court Action.

4 7. DFEH's repeated refusals to meet and confer about Cisco's motions were plainly
5 strategic. Despite repeatedly claiming a full schedule that apparently prevented any one of their
6 four attorneys on the caption from meeting and conferring for 20 minutes over a two-week
7 period, Ms. Proctor and the three other DFEH attorneys on the caption had sufficient time to put
8 together their Motion to Proceed Using a Fictitious Name, including 5 declarations and hundreds
9 of pages of exhibits. DFEH has improperly delayed meeting and conferring long enough. In
10 light of its conduct, it is clear that further attempts to meet and confer with DFEH would be futile.

11 I declare under penalty of perjury that the foregoing is true and correct and that this
12 Declaration was signed on November 3, 2020.

13 
14 _____
15 Joseph C. Liburt

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EXHIBIT A

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9 Attorneys for Plaintiff,
 California Department of Fair Employment and Housing

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 CALIFORNIA DEPARTMENT OF FAIR
 14 EMPLOYMENT AND HOUSING, an agency of
 the State of California,

15
 16 Plaintiff,

17 vs.

18 CISCO SYSTEMS, INC., a California
 Corporation; SUNDAR IYER, an individual;
 19 RAMANA KOMPELLA, an individual,

20 Defendants.

Case No.

**CIVIL RIGHTS - EMPLOYMENT
 DISCRIMINATION**

DEMAND FOR JURY TRIAL

21
 22 The California Department of Fair Employment and Housing (DFEH) brings this action against
 23 Cisco Systems, Inc. (Cisco) to remedy workplace discrimination, harassment, and retaliation violations
 24 at its San Jose, California corporate headquarters under Title VII of the Civil Rights Act of 1964 § 701
 25 *et seq.*, as amended, 42 U.S.C. § 2000e, *et seq.* (Title VII), and the California Fair Employment and
 26 Housing Act, Cal. Gov't Code § 12900, *et seq.* (FEHA). Specifically, Cisco engaged in unlawful
 27 employment practices on the bases of religion, ancestry, national origin/ethnicity, and race/color against
 28

1 Complainant John Doe,¹ and after Doe opposed such unlawful practices, Cisco retaliated against him.
2 Cisco also failed to take all reasonable steps to prevent such unlawful practices in its workplace, as
3 required under FEHA.

4 INTRODUCTION

5 1. John Doe is Dalit Indian, a population once known as the “Untouchables,” who are the
6 most disadvantaged people under India’s centuries-old caste system.² As a strict Hindu social and
7 religious hierarchy, India’s caste system defines a person’s status based on their religion, ancestry,
8 national origin/ethnicity, and race/color—or the caste into which they are born—and will remain until
9 death.³ At the bottom of the Indian hierarchy is the Dalit, typically the darkest complexion caste, who
10 were traditionally subject to “untouchability” practices which segregated them by social custom and
11 legal mandate. Although *de jure* segregation ended in India, lower caste persons like Dalits continue to
12 face *de facto* segregation and discrimination in all spheres.⁴ Not only do Dalits endure the most severe
13 inequality and unfair treatment in both the public and private sectors, they are often targets of hate
14 violence and torture. Of India’s approximately 1.3 billion people, about 200 million are Dalits.⁵

15 2. Unlike Doe, most Indian immigrants in the United States are from upper castes. For
16 example, in 2003, only 1.5 percent of Indian immigrants in the United States were Dalits or members of
17

18 ¹ Because of the stigma and potential threats of violence associated with a person’s status as Dalit,
19 DFEH uses a fictitious name for Complainant to protect his privacy and protect him from further
20 discrimination, harassment, or retaliation based on his caste and related characteristics. Through the
21 DFEH’s administrative process, Defendants have been made aware of Doe’s legal name.

22 ² Complainant John Doe is Dalit because of his religion, ancestry, national origin/ethnicity, and
23 race/color. The caste to which someone belongs is immutable and determines their social status in
24 traditional Indian culture. Social stratification and discrimination based on caste persists in India and
25 among those living outside India, including in America. Encyclopedia Britannica, *India: Caste* (June
26 24, 2020), <https://www.britannica.com/place/India/Caste> (last visited June 29, 2020).

27 ³ Smita Narula, Human Rights Watch, *Caste Discrimination: A Global Concern*, Background:
28 “Untouchability” and Segregation (2001), https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm#P133_16342 (last visited June 29, 2020).

⁴ Human Rights Watch & Center for Human Rights and Global Justice at New York University School
of Law, *Hidden Apartheid: Caste Discrimination against India’s “Untouchables,”* at 45 (2007),
<https://www.hrw.org/reports/2007/india0207/india0207webwcover.pdf>.

⁵ Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs,
Government of India, *2011 Primary Census Abstract*, <https://censusindia.gov.in/pca/default.aspx>.

1 lower castes.⁶ More than 90 percent were from high or dominant castes. Similarly, upon information
2 and belief, the same is true of the Indian employees in Cisco's workforce in San Jose, California.

3 3. As alleged below, at Cisco's San Jose headquarters, Doe worked with a team of entirely
4 Indian employees. The team members grew-up in India and immigrated as adults to the United States.
5 Except for Doe, the entire team are also from the high castes in India. As beneficiaries of the caste
6 system, Doe's higher caste supervisors and co-workers imported the discriminatory system's practices
7 into their team and Cisco's workplace.

8 4. Doe's supervisors and co-workers, Defendants Sundar Iyer and Ramana Kompella, are
9 from India's highest castes. Because both knew Doe is Dalit, they had certain expectations for him at
10 Cisco. Doe was expected to accept a caste hierarchy within the workplace where Doe held the lowest
11 status within the team and, as a result, received less pay, fewer opportunities, and other inferior terms
12 and conditions of employment because of his religion, ancestry, national origin/ethnicity, and race/color.
13 They also expected him to endure a hostile work environment. When Doe unexpectedly opposed the
14 unlawful practices, contrary to the traditional order between the Dalit and higher castes, Defendants
15 retaliated against him. Worse yet, Cisco failed to even acknowledge the unlawful nature of the conduct,
16 nor did it take any steps necessary to prevent such discrimination, harassment, and retaliation from
17 continuing in its workplace.

18 5. Not only did Cisco disregard Doe, but also its own workforce. For decades, similar to
19 Doe's team, Cisco's technical workforce has been—and continues to be—predominantly South Asian
20 Indian. According to the 2017 EEO-1 Establishment Report (EEO-1 Report), for example, Cisco has a
21 significant overrepresentation of Asian employees compared to other companies in the communications,
22 equipment and manufacturing industry (NAICS 3342) in the same geographic area, which is statistically
23 significant at nearly 30 standard deviations.⁷ Such overrepresentation is also present in management and
24

25 ⁶ Tinku Ray, *The US isn't safe from the trauma of caste bias*, The World (Mar. 08, 2019, 9:00 AM),
26 <https://www.pri.org/stories/2019-03-08/us-isn-t-safe-trauma-caste-bias>.

27 ⁷ 2017 EEO-1 Report for Cisco Systems, Inc. at 170 West Tasman Drive in San Jose, California.
28 Because Cisco is a federal contractor and employs 50 or more employees in California and the United
States, Cisco is required to file an Employer Information Report EEO-1, also known as the EEO-1
Report. The EEO-1 Report requires employers to report employment data for all employees categorized

1 professional job categories. In addition to Cisco’s direct workforce, Cisco also employs a significant
 2 number of South Asian Indian workers through Indian-owned consulting firms.⁸ When combining its
 3 direct employees and consultants together, Cisco is among the top five H-1B visa users in the United
 4 States.⁹ Over 70 percent of these H1-B workers come from India.¹⁰ Outside of San Jose, Cisco’s second
 5 largest workforce is in India.

6 6. Although Cisco has employed a predominantly South Asian Indian workforce for
 7 decades, Cisco was—and continues to be—wholly unprepared to prevent, remedy, or deter the unlawful
 8 conduct against Doe or similarly situated lower caste workers. Cisco failed to take any steps whatsoever
 9 to prevent “. . . inequalities associated with [c]aste status, ritual purity, and social exclusion [from]
 10 becom[ing] embedded . . .” into its workplace, which is a documented problem for “. . . American
 11 mainstream institutions that have significant South Asian immigrant populations.”¹¹ A 2018 survey of
 12 South Asians in the U.S. found that 67% of Dalits reported being treated unfairly at their American
 13 workplaces because of their caste and related characteristics.¹² However, few South Asian employees
 14 raised concerns to their American employers, because they believe “their concerns will not be given
 15 weight” or will lead to “negative consequences to their career.”¹³ This is precisely what happened to
 16 Doe at Cisco.

17
 18
 19 by sex, race/ethnicity, and job category. EEOC, *EEO-1 Instruction Booklet*, [https://www.eeoc.gov/
 20 employers/eo-1-survey/eo-1-instruction-booklet](https://www.eeoc.gov/employers/eo-1-survey/eo-1-instruction-booklet) (last visited June 23, 2020).

21 ⁸ Joshua Brustein, *Cisco, Google benefit from Indian firms’ use of H-1B program*, *The Economic Times*
 (June 6, 2017, 8:31 PM), [https://economictimes.indiatimes.com/tech/ites/cisco-google-benefit-from-
 22 indian-firms-use-of-h-1b-program/articleshow/59020625.cms](https://economictimes.indiatimes.com/tech/ites/cisco-google-benefit-from-indian-firms-use-of-h-1b-program/articleshow/59020625.cms).

23 ⁹ Laura D. Francis & Jasmine Ye Han, *Deloitte Top Participant in H-1B Foreign Worker Program—By
 Far*, *Bloomberg Law* (Feb. 4, 2020, 2:30 AM), [https://news.bloomberglaw.com/daily-labor-report/
 24 deloitte-top-participant-in-h-1b-foreign-worker-program-by-far](https://news.bloomberglaw.com/daily-labor-report/deloitte-top-participant-in-h-1b-foreign-worker-program-by-far).

25 ¹⁰ U.S. Citizenship and Immigration Services, *Characteristics of H-1B Specialty Occupation Workers:
 Fiscal Year 2019 Annual Report to Congress October 1, 2018 – September 30, 2019*, at 7 (Mar. 5,
 26 2020), [https://www.uscis.gov/sites/default/files/reports-studies/
 27 Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf](https://www.uscis.gov/sites/default/files/reports-studies/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf)

28 ¹¹ Maari Zwick-Maitreyi et al., Equality Labs, *Caste in the United States: A Survey of Caste Among
 South Asian Americans*, 16 (2018) [https://static1.squarespace.com/static/58347d04beba9bb1e66df84c/t/
 5d9b4f9afbaef569c0a5c132/1570459664518/Caste_report_2018.pdf](https://static1.squarespace.com/static/58347d04beba9bb1e66df84c/t/5d9b4f9afbaef569c0a5c132/1570459664518/Caste_report_2018.pdf).

¹² *Id.* at 20.

¹³ *Ibid.*

JURISDICTION AND VENUE

7. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1367(a). This action is authorized and instituted pursuant to Title VII, 42 U.S.C. § 2000e-5(f)(3), and the Civil Rights Act of 1991 § 102, 42 U.S.C. § 1981a.

8. This Court has supplemental jurisdiction over Plaintiff’s state law claims under the FEHA pursuant to 28 U.S.C. § 1367. These claims constitute the same case and controversy raised in the claims under federal law. This action is also authorized and instituted pursuant to Cal. Gov’t Code §§ 12930 (f) and (h), 12965(a).

9. The employment practices alleged to be unlawful were and are now being committed within the County of Santa Clara in the State of California, which is within the jurisdiction of the United States District Court for the Northern District of California. Venue is therefore proper in the United States District Court for the Northern District of California. 28 U.S.C. § 1391(b)(1)-(2); 42 U.S.C. Section 2000e-5(f)(3); Cal. Gov’t Code § 12965(a).

10. Plaintiff has standing to bring this suit and has complied with all statutory prerequisites to maintain Title VII and FEHA claims.

11. John Doe filed a pre-complaint inquiry with DFEH on or about April 20, 2018, and a verified administrative complaint against Defendant Cisco on or about July 30, 2018. The charge was dually filed with the Equal Employment Opportunity Commission (EEOC). DFEH properly served the administrative complaint on Defendant Cisco on or about August 7, 2018. On or around October 9, 2018, Doe filed an amended administrative complaint against Defendants Cisco, Iyer, and Kompella. The amended administrative complaint was properly served on all named responding parties on or about October 9, 2018.

12. DFEH investigated Doe’s dually filed EEOC-DFEH charge and complaint pursuant to Cal. Gov’t Code §§ 12930(f) and 12963; Title VII, 42 U.S.C. § 2000e-8(b); and the EEOC-DFEH Worksharing Agreement.

13. Pursuant to Cal. Gov’t Code § 12965(a), the DFEH convened a mandatory dispute resolution session on or about February 11, 2020. Settlement discussions were unsuccessful. The DFEH and Defendants entered consecutive tolling agreements to toll the statutory deadline for DFEH to file a

1 civil action to June 30, 2020. The EEOC issued a right to sue letter regarding the Complainant’s federal
2 claims on June 29, 2020, and DFEH files this action pursuant to the FEHA, Cal. Gov’t Code §§
3 12930(f)(1), (h), 12965(a); Title VII, 42 U.S.C. § 2000e-8(b); and the EEOC-DFEH Worksharing
4 Agreement. All conditions precedent to the institution of this lawsuit have been fulfilled. The amount of
5 damages sought by this complaint exceeds the minimum jurisdictional limits of this Court.

6 **INTRADISTRICT ASSIGNMENT**

7 14. This action is appropriate for assignment to the San Jose Division of this Court as the
8 alleged unlawful practices were and are now being committed in Santa Clara County, which is within
9 the jurisdiction of the San Jose Division.

10 **PARTIES**

11 **Plaintiff California Department of Fair Employment and Housing**

12 15. Plaintiff DFEH is the agency of the State of California charged with the administration,
13 interpretation, investigation, and enforcement of the FEHA and Title VII, and is expressly authorized to
14 bring this action by Cal. Gov’t Code §§ 12930(f), (h), and 12965(a); and 42 U.S.C. § 2000e-5(f)(3).

15 16. Complainant John Doe is the person claiming to be aggrieved on whose behalf the
16 DFEH files this civil action. Cal. Gov’t Code §§ 12965(a), 12930(f) & (h); 42 U.S.C. §2000e(l).

17 17. At all relevant times, Complainant Doe was, and remains, an “employee” of
18 Defendant Cisco within the meaning of Title VII and FEHA. 42 U.S.C. §§ 2000e(f), 2000e-2(a), 2000e-
19 3(a); Cal. Gov’t Code §§ 12926(c)-(d); 12940(a), (j), (k). On or around October 2015 to November
20 2018, Doe worked as a Principal Engineer with Cisco in Santa Clara County, California. Since on or
21 about December 2018, Doe has worked as a Principal Engineer with Cisco in Santa Clara County,
22 California.

23 18. At all relevant times, Complainant Doe was, and remains, a “person” within the meaning
24 of the FEHA. Cal. Gov’t Code §§ 12925(d), 12940(h).

25 **Defendant Cisco Systems, Inc.**

26 19. Defendant Cisco (EEO-1 reporting number N14137) is a leading global high-tech firm
27 founded in 1984. The company designs, manufactures, sells, and supports equipment for internet-based
28 networking. It has approximately 75,900 employees worldwide and is publicly traded on NASDAQ. The

1 firm’s EEO-1 reports places it in the communications equipment manufacturing industry (NAICS 3342).
2 Within California, Cisco employs at least 18,281 employees at 19 establishments in 6 different
3 metropolitan areas, including the corporate headquarters in San Jose.

4 20. At all relevant times, Defendant Cisco has continuously been and is now a California
5 Corporation doing business in the State of California and the Cities of San Jose and Milpitas in Santa
6 Clara County and has continuously had at least fifteen employees.

7 21. At all relevant times, Defendant Cisco has continuously been an employer engaged in an
8 industry affecting commerce within the meaning of Title VII, 42 U.S.C. § 2000e(b), (g), and (h), and
9 Cal. Gov’t Code § 12926(d).

10 22. At all relevant times, Cisco contracted with and received federal and state funds from the
11 United States and California governments.

12 **Defendant Sundar Iyer**

13 23. At all relevant times, Defendant Sundar Iyer was employed by Cisco as a “supervisor”
14 within the meaning of FEHA. Cal. Gov’t Code § 12926(t). DFEH is informed and believes that Iyer was
15 a Distinguished Engineer with Cisco. Public records indicate Iyer resided in Palo Alto, California at the
16 time of the events alleged herein.

17 24. At all relevant times, Defendant Iyer was the agent of Defendant Cisco and was acting
18 within the scope and authority of such agency, and Defendant Iyer is jointly and severally responsible
19 and liable to Complainant Doe for the damages alleged.

20 **Defendant Ramana Kompella**

21 25. At all relevant times, Defendant Ramana Kompella was employed by Cisco as a
22 “supervisor” within the meaning of the FEHA. Cal. Gov’t Code § 12926(t). DFEH is informed and
23 believes that Kompella was a Principal Engineer with Cisco. Public records indicate Kompella resided
24 in Cupertino, California at the time of the events alleged herein.

25 26. At all relevant times, Defendant Kompella was the agent of Defendant Cisco and was
26 acting within the scope and authority of such agency, and Defendant Kompella is jointly and severally
27 responsible and liable to Complainant Doe for the damages alleged.

28

STATEMENT OF CLAIMS

1
2 27. Beginning in the November 1, 2016, Defendants Cisco, Iyer, and Kompella engaged in
3 unlawful employment practices, in violation of 42 U.S.C. §§ 2000e-2(a), 2000e-3(a), and Cal. Gov't
4 Code § 12940(a), (j), (h), and (k). These practices include but are not limited to the practices described
5 below.

6 28. Complainant Doe's ancestry, national origin/ethnicity, and race/color is Dalit Indian. Doe
7 has a darker complexion relative to other persons of non-Dalit Indian descent. Doe's religion is Hindu.
8 As a Dalit, he also is known as being from the Untouchable or Scheduled Caste.

9 29. Doe has over 20 years of experience in the software development lifecycle process at
10 startups and established companies. In or around September 2015, Iyer recruited and hired Doe as a
11 Principal Engineer for Cisco because of his expertise and experience. As the head of the Cisco team,
12 Iyer hired and supervised Doe, having the authority to control his day-to-day assignments, discipline,
13 discharge, direct, and transfer Doe. Upon information and belief, Iyer is Brahmin.

14 30. In or around October 2016, two of Doe's colleagues told Doe that Iyer informed them
15 that Doe was from the "Scheduled Caste" (Dalit) and enrolled in the Indian Institute of Technology (IIT)
16 through affirmative action. Iyer was aware of Doe's caste because they attended IIT at the same time.

17 31. In or around November 1, 2016, Doe confronted Iyer about disclosing Doe's caste to
18 other Cisco employees. Iyer asked Doe who claimed he made such a comment. After Doe shared the
19 names of his colleagues, Iyer denied the comment and stated Doe's colleagues were not telling the truth.

20 32. In or around November 21, 2016, Doe contacted Cisco's human resources (HR) and
21 Employee Relations to file a discrimination complaint against Iyer.

22 33. Six days after Doe's first contact with Cisco's HR and employee relations, Iyer told Doe
23 he was taking away Doe's role as lead on two technologies.

24 34. On or around November 28, 2016, Iyer promoted two of Doe's colleagues to head
25 engineering roles, one of whom was Defendant Kompella. Kompella was made Head of Southbound
26 Engineering. Upon information and belief, Kompella is Brahmin or at least of a higher caste than Dalit.
27 With this new title, Defendant Kompella received a raise of approximately 15% or more. As the Head of
28

1 Southbound Engineering, Kompella had the ability to direct the day-to-day assignments and recommend
2 employment actions for those on his team, including Doe.

3 35. On or around November 28, 2016, Iyer also removed team members from the third
4 technology Doe was working on and did not formally integrate the third technology into either team
5 headed by the two new Heads of Engineering. As a result of these changes, Doe's role was reduced to
6 that of a system architect as an independent contributor, and he was isolated from all his colleagues.

7 36. On or around December 8, 2016, Doe submitted a written complaint about Iyer's
8 disclosure of Doe's caste, Doe's complaint to Iyer, and Iyer's retaliatory employment actions, including
9 the sudden changes to Doe's job duties. He also complained that Iyer made discriminatory comments to
10 a colleague and about a job applicant because of the applicant's religion (Muslim).

11 37. Cisco's Employee Relations Manager, Brenda Davis, conducted the investigation into
12 Doe's December 2016 complaint. Davis' internal investigation notes revealed that Iyer admitted that he
13 told Doe's colleagues that Doe was not on the "main list." Among those from India, it is commonly
14 known that students not on the main list are admitted to IIT through an affirmative action program
15 designed for those from the "Scheduled Castes" or those outside the caste system. Therefore, stating that
16 someone is not on the "main list" effectively reveals their caste. Despite this, Davis took no further
17 action and failed to even contact relevant witnesses or Doe.

18 38. Cisco Employee Relations staff, including Davis, also indicated that caste discrimination
19 was not unlawful. As a result, Davis did not recommend any corrective action against Iyer. Iyer also
20 admitted that he made a joke about Doe's co-worker's religion and talked about an applicant's Muslim-
21 related appearance. Still, Davis did not recommend any corrective action. On or around February 2,
22 2017, Davis closed her investigation finding all of Doe's complaints were unsubstantiated.

23 39. Iyer's retaliatory efforts continued. He further isolated Doe from the team when he
24 disparaged Doe to other employees, misrepresented that Doe did not perform his job adequately, and
25 told Doe's team members that they should avoid working with him.

26 40. On or around March 2, 2017, Doe sought review of Davis' investigation findings. After
27 repeated attempts to have Cisco review Davis' findings, HR official Tara Powell finally reopened the
28 investigation on or around April 25, 2017. Powell re-interviewed one of the employees to whom Iyer

1 made the comment about Doe's caste in or around October 2015. The employee stated that he learned
2 about Doe's caste but refused to tell Powell how he knew, noting that he did not want to say anything
3 about Iyer because they had known each other for a long time. He also stated that he thought Doe was
4 being treated unfairly and that he was very technically able but was being excluded at work. Powell did
5 not attempt to contact for an interview the other employee who witnessed Iyer's disclosure of Doe's
6 caste. Two additional witnesses told Powell that they feared losing their jobs or otherwise being
7 retaliated against for speaking out against Iyer. One of those employees also told Powell that he thought
8 Doe was very competent and asked appropriate questions, but that Iyer was setting Doe up to push him
9 out of the company.

10 41. Powell's investigation also uncovered a spreadsheet that showed anticipated yearly
11 raises, bonuses, and restricted stock unit awards that Iyer had promised Doe. These raises, bonuses, and
12 awards never materialized when promised. But Powell also found that four out of the eight other team
13 members received raises in or around October 2016.

14 42. In or around August 2017, Powell concluded she could not substantiate any caste-based
15 or related discrimination or retaliation against Doe. Powell, however, determined that Iyer mocked
16 another employee's religion, and thus violated Cisco's Code of Conduct. Still, no immediate corrective
17 action was taken.

18 43. Despite Doe's repeated attempts to bring the caste-based and related discrimination,
19 harassment, and retaliation to Defendant Cisco's attention in 2016 and 2017, Cisco failed to recognize
20 casteism as a form of unlawful religion-, ancestry-, national origin/ethnicity-, and race/color-based
21 discrimination or harassment under state or federal law and failed to conduct a thorough investigation.
22 While the investigation confirmed Doe was increasingly isolated and treated unfairly by Iyer and
23 Kompella, Cisco failed to take timely and appropriate corrective action. Moreover, Cisco's training was
24 deficient in that it did not adequately train managerial employees on workplace discrimination,
25 harassment, and retaliation, nor did the company prevent, deter, remedy, or monitor casteism in its
26 workforce.

27 44. On or around February 26, 2018, Kompella became the Interim Head of Engineering for
28 Cisco's team after Iyer stepped down. In his new role, Kompella supervised Doe and continued to

1 discriminate, harass, and retaliate against Doe by, for example, giving him assignments that were
2 impossible to complete under the circumstances. Kompella also began requiring Doe to submit weekly
3 status reports to him and Senior Vice President/General Manager Tom Edsall.

4 45. On or around May 21, 2018, Rajeev Gupta took over from Kompella and became the
5 Director of Engineering. In that role, Gupta supervised Doe.

6 46. Two months later, in or around July 2018, Doe applied for the position of Director of
7 Research and Development Operations with Gupta. According to Gupta's interview notes, he ranked
8 Doe as "below average" in six out of eight categories and as "meeting requirements" in the remaining
9 two categories. But Gupta's assessment of Doe was improperly influenced by Iyer's retaliatory
10 employment actions. Gupta specifically cited Doe's lead role being taken away and his job reduced to
11 that of an independent contributor in November 2016. Gupta's notes also reflected Iyer's retaliatory
12 criticisms about Doe's work product, social skills, and insubordination. Doe did not get the position.

13 47. The effect of the unlawful employment practices complained of above was to deprive
14 Doe of equal employment opportunities, and otherwise adversely affect his status as employees, because
15 of religion, ancestry, national origin/ethnicity, and race/color.

16 48. The unlawful employment practices complained of above were intentional.

17 49. The unlawful employment practices complained of above were done with malice or with
18 reckless indifference to Doe's federally and state-protected civil rights.

19 **FIRST CAUSE OF ACTION**

20 **Violation of Title VII: Discrimination on the Basis of Religion, Ancestry, National**
21 **Origin/Ethnicity, and Race/Color**
(42 U.S.C. § 2000e-2(a))
Against Defendant Cisco

22 50. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

23 51. Title VII provides it is an unlawful employment practice for an employer to discriminate
24 against an employee with respect to his compensation, terms, conditions, or privileges of employment,
25 or to limit, segregate or classify the employee in any way that would deprive or tend to deprive him of
26 employment opportunities or otherwise adversely affect his employment status on the basis of his
27 religion, ancestry, national origin/ethnicity, and race/color. 42 U.S.C. § 2000e-2(a).

28

1 52. As alleged above, Cisco discriminated against Doe by subjecting him to disparate terms
2 and conditions of employment based on his religion, ancestry, national origin/ethnicity, and race/color.
3 Among other actions, Cisco reassigned Doe’s job duties and isolated him from his colleagues, denied
4 him a raise, denied him work opportunities that would have led to a raise, denied him a promotion to the
5 Head of Engineering, and denied him a promotion to the Director of Research and Development
6 Operations.

7 53. The alleged discriminatory comments and conduct constitute unlawful discrimination for
8 which Defendant Cisco is liable under 42 U.S.C. § 2000e-2(a).

9 54. As a direct result of these unlawful employment practices, Doe suffered economic
10 injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at
11 trial.

12 55. As a direct result of these unlawful employment practices, Doe suffered emotional
13 distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and
14 hopelessness, in an amount to be proven at trial.

15 56. Defendant Cisco’s actions were willful, malicious, fraudulent, and oppressive, and were
16 committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

17 57. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it
18 will continue to engage in, unlawful employment discrimination described herein unless it is enjoined
19 pursuant Title VII. Unless Defendant Cisco is enjoined from failing or refusing to comply with the
20 mandates of Title VII, Doe and other persons’ rights to seek or hold employment free of unlawful
21 discrimination will continue to be violated.

22 58. Plaintiff lacks any plain, speedy, and adequate remedy at law to prevent such harm,
23 injury, and loss that is the subject of this complaint and will continue until this Court enjoins the
24 unlawful conduct and grants other injunctive relief as prayed for herein.

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SECOND CAUSE OF ACTION

**Violation of Title VII: Harassment on the Basis of Religion, Ancestry, National Origin/Ethnicity,
and Race/Color
(42 U.S.C. § 2000e-2(a))
Against Defendant Cisco**

59. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

60. Title VII prohibits harassment as a form of discrimination when it creates a hostile work environment. Employers are liable for the harassment of their supervisors. 42 U.S.C. § 2000e-2(a).

61. As alleged above, as supervisors for Cisco’s team, Defendants Iyer and Kompella subjected Doe to offensive comments and other misconduct based on his caste, which includes his religion, ancestry, national origin/ethnicity, and race/color, so severe or pervasive that it created a hostile work environment. Among other things, Iyer and Kompella’s comments and conduct include revealing Doe’s caste to his colleagues, disparaging him to the team, isolating him from the rest of the team, reducing his role to that of an independent contributor, giving him assignments that were impossible to complete under the circumstances, and requiring him to submit weekly status reports. Such a work environment where a stigmatizing personal characteristic such as caste is publicized and used to subjugate an individual in order to maintain a centuries-old hierarchy is hostile, intimidating, offensive, oppressive, and abusive. Other employees corroborated that Doe was isolated from the rest of the team and that Iyer and Kompella were responsible for it. These were observations Cisco was made aware of during its internal investigations. As evidenced by Doe’s repeated internal complaints, he in fact considered the work environment to be hostile, intimidating, offensive, oppressive, and abusive.

62. As a direct result of these unlawful employment practices, Doe suffered economic injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at trial.

63. As a direct result of these unlawful employment practices, Doe suffered emotional distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an amount to be proven at trial.

64. Defendant Cisco’s actions were willful, malicious, fraudulent, and oppressive, and were committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

1 71. As a direct result of these unlawful employment practices, Doe suffered emotional
2 distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and
3 hopelessness, in an amount to be proven at trial.

4 72. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were
5 committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

6 73. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it
7 will continue to engage in, unlawful employment discrimination described herein unless it is enjoined
8 pursuant to Title VII. Unless Defendant Cisco is enjoined from failing or refusing to comply with the
9 mandates of Title VII, Doe and other persons' rights to seek or hold employment free of unlawful
10 discrimination will continue to be violated.

11 74. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such
12 harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the
13 unlawful conduct and grants other injunctive relief as prayed for herein.

14 **FOURTH CAUSE OF ACTION**

15 **Violation of FEHA: Discrimination on the Basis of Religion, Ancestry, National Origin/Ethnicity,
16 and Race/Color
(Cal. Gov't Code § 12940(a))
Against Defendant Cisco**

17 75. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

18 76. The FEHA guarantees all employees a workplace free from unlawful discrimination and
19 harassment based on the employee's religion, ancestry, national origin/ethnicity, and race/color. Cal.
20 Gov't Code § 12940(a).

21 77. Cisco subjected Doe to discriminatory comments and conduct because of his religion,
22 ancestry, national origin/ethnicity, and race/color, as alleged above and in the First Cause of Action.

23 78. The alleged discriminatory comments and conduct constitute unlawful discrimination for
24 which Defendant Cisco is liable under Cal. Gov't Code § 12940(a).

25 79. As a direct result of these unlawful employment practices, Doe suffered economic
26 injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at
27 trial.

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1 80. As a direct result of these unlawful employment practices, Doe suffered emotional
2 distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and
3 hopelessness, in an amount to be proven at trial.

4 81. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were
5 committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

6 82. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it
7 will continue to engage in, the unlawful employment discrimination described herein unless it is
8 enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply
9 with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of
10 unlawful discrimination will continue to be violated.

11 83. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such
12 harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the
13 unlawful conduct and grants other injunctive relief as prayed for herein.

14 **FIFTH CAUSE OF ACTION**

15 **Violation of FEHA: Harassment on the Basis of Religion, Ancestry, National Origin/Ethnicity, and**
16 **Race/Color**
17 **(Cal. Gov't Code § 12940(j))**
18 **Against All Defendants**

19 84. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

20 85. The FEHA prohibits harassment based on the employee's protected characteristics
21 including, but not limited to, their caste, which includes religion, ancestry, national origin/ethnicity, and
22 race/color. Cal. Gov't Code § 12940(j). Employers are liable for the harassment of their supervisors. *Id.*
23 (j)(1). Employees and supervisors are liable for their own harassing conduct. *Id.* (j)(3).

24 86. As supervisors for Cisco, Defendants Iyer and Kompella subjected Doe to offensive
25 comments and other misconduct based on his caste, which includes his religion, ancestry, national
26 origin/ethnicity, and race/color, so severe or pervasive that it created a hostile work environment, as
27 alleged above and in the Second Cause of Action.

28 87. Defendants Iyer and Kompella are individually liable for their own harassing conduct in
violation of the FEHA.

1 88. Because Defendants Iyer and Kompella were supervisors within the meaning of the
2 FEHA, Defendant Cisco is liable for their harassing conduct. Defendant Cisco knew or should have
3 known of the conduct as a result of Doe’s internal complaints and is liable for its failure to take
4 immediate and appropriate corrective action.

5 89. As a direct result of these unlawful employment practices, Doe suffered economic
6 injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at
7 trial.

8 90. As a direct result of these unlawful employment practices, Doe suffered emotional
9 distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and
10 hopelessness, in an amount to be proven at trial.

11 91. Defendant Cisco’s actions were willful, malicious, fraudulent, and oppressive, and were
12 committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

13 92. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it
14 will continue to engage in, the unlawful employment discrimination described herein unless it is
15 enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply
16 with the mandates of the FEHA, Doe and other persons’ rights to seek or hold employment free of
17 unlawful discrimination will continue to be violated.

18 93. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such
19 harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the
20 unlawful conduct and grants other injunctive relief as prayed for herein.

21 **SIXTH CAUSE OF ACTION**
22 **Violation of FEHA: Retaliation**
23 **(Cal. Gov’t Code § 12940(h))**
24 **Against Defendant Cisco**

25 94. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

26 95. California law also guarantees each employees’ right to a workplace and business
27 environment free from unlawful retaliation because the employee opposed discriminatory or harassing
28 practices that are unlawful under the FEHA. Employers are liable for the retaliatory conduct of
supervisors. *Id.* § 12940(h).

1 96. As supervisors for Cisco, Defendants Iyer and Kompella retaliated against Doe for
2 opposing their discriminatory and harassing conduct by confronting Iyer and filing internal
3 discrimination complaints and Cisco aided the retaliation, as alleged above and in the Third Cause of
4 Action.

5 97. Defendant Cisco is liable for the retaliatory conduct of Defendants Iyer and Kompella.

6 98. As a direct result of these unlawful employment practices, Doe suffered economic
7 injuries including, but not limited to, lost wages and other compensation, in an amount to be proven at
8 trial.

9 99. As a direct result of these unlawful employment practices, Doe suffered emotional
10 distress including, but not limited to, emotional pain, suffering, mental anguish, humiliation, and
11 hopelessness, in an amount to be proven at trial.

12 100. Defendant Cisco's actions were willful, malicious, fraudulent, and oppressive, and were
13 committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

14 101. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it
15 will continue to engage in, the unlawful employment discrimination described herein unless it is
16 enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply
17 with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of
18 unlawful discrimination will continue to be violated.

19 102. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such
20 harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the
21 unlawful conduct and grants other injunctive relief as prayed for herein.

22 **SEVENTH CAUSE OF ACTION**

23 **Violation of FEHA: Failure to Take All Reasonable Steps to Prevent Discrimination, Harassment,
and Retaliation**

24 **(Cal. Gov't Code § 12940(k))
Against Defendant Cisco**

25 103. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

26 104. California Government Code section 12940(k) provides that it is an unlawful
27 employment practice for an employer to fail to take all reasonable steps necessary to prevent
28 discrimination, harassment, and retaliation from occurring. Employers have the affirmative duty to take

1 all reasonable steps to prevent and promptly correct discriminatory, harassing, and retaliatory conduct.
2 Cal. Code Regs. tit. 2, § 11023(a). Cisco’s conduct, as described above, constitutes a failure to take all
3 reasonable steps necessary to prevent discrimination, harassment, and retaliation in violation of Cal.
4 Gov’t Code § 12940(k).

5 105. An actionable claim for violation of California Government Code section 12940(k) on
6 behalf of a complainant exists when an underlying claim of discrimination, harassment, or retaliation is
7 established. Cal. Code Regs. tit. 2, § 11023(a)(2).

8 106. As alleged above, Defendant Cisco failed to take all reasonable steps necessary to prevent
9 discrimination, harassment, and retaliation from occurring within its South Asian Indian workforce.
10 Among other things, Defendant Cisco failed to develop anti-discrimination and anti-harassment policies
11 and practices that recognize and prohibit caste discrimination as a form of unlawful discrimination under
12 state and federal law. Defendant Cisco also failed to provide appropriate training to managers,
13 supervisors employees, human resources, and employee relations personnel on how to identify,
14 investigate, remediate, and prevent caste-based discrimination and harassment, or retaliation against
15 employees or persons who oppose discriminatory and harassing practices that are unlawful under the
16 FEHA.

17 107. Defendant Cisco failed to prevent discrimination and harassment by its managers and
18 supervisors against Doe because of his caste.

19 108. Defendant Cisco failed to prevent retaliation by its managers and supervisors against Doe
20 because he opposed discriminatory and harassing practices that are unlawful under the FEHA.

21 109. As a direct result of Cisco’s failures, Doe was subjected to unlawful discrimination,
22 harassment, and retaliation by Cisco’s managers and supervisors, suffering economic injuries including,
23 but not limited to, lost wages and other compensation, in an amount to be proven at trial.

24 110. As a direct result of Cisco’s failures, Doe was subjected to unlawful discrimination,
25 harassment, and retaliation by Cisco’s managers and supervisors, suffering emotional distress including,
26 but not limited to, emotional pain, suffering, mental anguish, humiliation, and hopelessness, in an
27 amount to be proven at trial.

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1 111. Defendant Cisco’s actions were willful, malicious, fraudulent, and oppressive, and were
2 committed with the wrongful intent to injure Doe and in conscious disregard of his rights.

3 112. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it
4 will continue to engage in, the unlawful employment discrimination described herein unless it is
5 enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply
6 with the mandates of the FEHA, Doe and other persons’ rights to seek or hold employment free of
7 unlawful discrimination will continue to be violated.

8 113. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such
9 harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the
10 unlawful conduct and grants other injunctive relief as prayed for herein.

11 **EIGHTH CAUSE OF ACTION**

12 **Violation of FEHA: Failure to Take All Reasonable Steps to Prevent Discrimination, Harassment,
13 and Retaliation
(Cal. Gov’t Code § 12940(k))
14 Against Defendant Cisco**

15 114. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

16 115. In an exercise of the DFEH’s police powers, the DFEH may independently seek
17 additional remedies for a violation of Cal. Gov’t Code § 12940(k). Cal. Code Regs. tit. 2, §
18 11023(a)(3). As the agency of the State of California charged with the administration, interpretation,
19 investigation, and enforcement of FEHA, the DFEH brings this claim in the name of the DFEH on
20 behalf of all Indian persons who are or are perceived to be Dalit, of lower castes, or who fall outside the
caste system, who are employed by or may seek employment with Cisco in the future.

21 116. As alleged above, Defendant Cisco failed to take all reasonable steps necessary to prevent
22 discrimination, harassment, and retaliation from occurring within its South Asian Indian workforce.
23 Among other things, Defendant Cisco failed to develop anti-discrimination and anti-harassment policies
24 and practices that recognize and prohibit caste discrimination as a form of unlawful discrimination under
25 state and federal law. Defendant Cisco also failed to provide appropriate training to managers,
26 supervisors employees, human resources, and employee relations personnel on how to identify,
27 investigate, remediate, and prevent caste-based discrimination and harassment, or retaliation against
28

1 employees or persons who oppose discriminatory and harassing practices that are unlawful under the
2 FEHA.

3 117. Cisco's failure to take any reasonable steps to prevent, deter, remedy, or monitor casteism
4 and related violations in its workforce exposes a significant portion of its South Asian Indian workforce
5 to the risk of discrimination, harassment, and retaliation on the basis of their caste and related
6 characteristics.

7 118. Defendant Cisco engaged in, and by its refusal to comply with the law, demonstrated it
8 will continue to engage in, the unlawful employment discrimination described herein unless it is
9 enjoined pursuant to the FEHA. Unless Defendant Cisco is enjoined from failing or refusing to comply
10 with the mandates of the FEHA, Doe and other persons' rights to seek or hold employment free of
11 unlawful discrimination will continue to be violated.

12 119. Plaintiff DFEH lacks any plain, speedy, and adequate remedy at law to prevent such
13 harm, injury, and loss that is the subject of this complaint and will continue until this Court enjoins the
14 unlawful conduct and grants other injunctive relief as prayed for herein.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the DFEH respectfully requests that this Court:

17 1. Grant a permanent injunction enjoining Defendants, their officers, agents, servants,
18 employees, attorneys, and all persons in active concert or participation with them, from engaging in
19 discrimination and harassment based on religion, ancestry, national origin/ethnicity, and race/color.

20 2. Grant a permanent injunction enjoining Defendants, their officers, agents, servants,
21 employees, attorneys, and all persons in active concert or participation with them, from engaging in
22 retaliation.

23 3. Order Defendants to institute and carry out policies, practices, and programs that provide
24 equal employment opportunities for individuals regardless of their religion, ancestry, national
25 origin/ethnicity, and race/color, and that eradicate the effects of their past and present unlawful
26 employment practices

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4. Order Defendants to make Doe whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other injunctive relief necessary to eradicate the effects of Defendants’ unlawful employment practices.

5. Order Defendants to make Doe whole, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described herein, in amounts to be determined at trial.

6. Order Defendants to make Doe whole, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of herein, including losses such as emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

7. Order Defendants to pay Doe punitive damages for their malicious and/or reckless conduct described herein, in amounts to be determined at trial.

8. Grant such further relief as the Court deems necessary and proper in the public interest.

9. Award the DFEH its costs of this action, including reasonable attorneys’ fees, as provided by statute.

JURY TRIAL DEMAND

The DFEH requests a jury trial on all questions of fact raised by its complaint.

Dated: June 30, 2020

CALIFORNIA DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING


By: 
JEANNETTE HAWN
Staff Counsel
Attorneys for the DFEH

EXHIBIT B

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 5:20-cv-04374-NC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* CISCO SYSTEMS, INC.
was received by me on *(date)* 09/27/2020

I personally served the summons on the individual at *(place)* _____
on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* CSC Lawyers Incorporating Service. Koy Saechao, Receptionist, who is
designated by law to accept service of process on behalf of *(name of organization)* CISCO SYSTEMS, INC. at
2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833 at 8:51 a.m. on *(date)* 09/28/2020 ; or


I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: 09/28/2020



Server's signature

ASHMEET KIRPAL, Registered California Process Server
Printed name and title
Ace Attorney Service, Inc.
901 F Street, Suite 150, Sacramento, California 95814
Phone No.: (916) 447-4000 / Fax No.: (916) 447-8000
Registration No.: 2017-02 / County: SACRAMENTO
Server's address

Additional information regarding attempted service, etc:

In addition to the Summons the following was also served:

- 1. CIVIL RIGHTS - EMPLOYMENT DISCRIMINATION DEMAND FOR JURY TRIAL; 2. CIVIL COVER SHEET; 3. ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE AND ADR DEADLINES; 4. CONSENT OR DECLINATION TO MAGISTRATE JUDGE JURISDICTION; 5. NOTICE OF ELIGIBILITY FOR VIDEO RECORDING; 6. ORDER REASSIGNING CASE; 7. NOTICE OF ELECTRONIC FILING; 8. NOTICE OF APPEARANCE; 9. JOINT STIPULATION FOR AMENDED CASE MANAGEMENT SCHEDULE: [PROPOSED] ORDER (Civ. L.R. 6-1(b) and 6-2(a); Fed. R. Civ. P. 16(b)(4); Civ. L.R. 16-2(e)); 10. JOINT STIPULATION FOR AMENDED CASE MANAGEMENT SCHEDULE; (Civ. L.R. 6-1(b) and 6-2(a); Fed. R. Civ. P. 16(b)(4); Civ. L.R. 16-2(e)); 11. STANDING ORDER FOR CIVIL CASES; 12. STANDING ORDER FOR ALL JUDGES OF THE NORTHERN DISTRICT OF CALIFORNIA, CONTENTS OF JOINT CASE MANAGEMENT STATEMENT

EXHIBIT C

1 JANETTE WIPPER (#275264)
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 2 Janette.Wipper@dfeh.ca.gov
 MELANIE L. PROCTOR (#228971)
 3 Assistant Chief Counsel
 Melanie.Proctor@dfeh.ca.gov
 4 SIRITHON THANASOMBAT (#270201)
 Senior Staff Counsel
 5 Siri.Thanasombat@dfeh.ca.gov
 JEANETTE HAWN (#307235)
 6 Staff Counsel
 Jeanette.Hawn@dfeh.ca.gov
 7 CALIFORNIA DEPARTMENT OF FAIR
 EMPLOYMENT AND HOUSING
 8 2218 Kausen Drive, Suite 100
 Elk Grove, CA 95758
 9 Telephone: (916) 478-7251
 Facsimile: (888) 382-5293

10
 11 Attorneys for Plaintiff,
 California Department of Fair Employment and Housing

12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN JOSE DIVISION**

15 CALIFORNIA DEPARTMENT OF FAIR
 16 EMPLOYMENT AND HOUSING, an agency of
 the State of California,

17
 18 Plaintiff,

19 vs.

20 CISCO SYSTEMS, INC., a California
 Corporation; SUNDAR IYER, an individual;
 21 RAMANA KOMPELLA, an individual,

22 Defendants.

Case No. 5:20-cv-04374-EJD

**PLAINTIFF DFEH'S NOTICE OF
 VOLUNTARY DISMISSAL WITHOUT
 PREJUDICE**

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1 TO THE HONORABLE COURT, ALL PARTIES AND COUNSEL: Plaintiff Department of
2 Fair Employment and Housing, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), voluntarily
3 dismisses this entire case. Such dismissal shall be without prejudice, with each side to bear its own costs
4 and fees.

5 Dated: October 16, 2020

CALIFORNIA DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING

7 /s/ Melanie L. Proctor
8 MELANIE L. PROCTOR
9 *Attorneys for California Department of Fair
Employment and Housing*

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DECLARATION OF SERVICE

I, the undersigned, hereby declare:

I am over eighteen years of age and not a party to the within cause. My business and mailing address is 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758.

On October 16, 2020, I served the following document(s) by U.S. Mail:

- PLAINTIFF DFEH’S NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

In the matter of *DFEH v. Cisco Systems, Inc.*, Case No. 5:20-cv-04374-EJD to the person(s) listed below at the following address(es):

<p>Lynn C. Hermle Carolina Garcia Joseph C. Liburt Orrick Herrington & Sutcliffe LLP 1000 Marsh Road Menlo Park, CA 94025</p> <p><i>(Attorneys for Defendant, Cisco Systems, Inc.)</i></p>	<p>Alexander Hernaez Fox Rothschild LLP 345 California Street, Suite 2200 San Francisco, CA 94104</p> <p><i>(Attorneys for Defendants, Sundar Iyer and Ramana Kompella.)</i></p>
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on October 16, 2020, at Elk Grove, Sacramento County, California.

IVA TOWNSEL

EXHIBIT D

Garcia, Carolina

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Sent: Friday, October 16, 2020 11:43 AM
To: Garcia, Carolina
Cc: Thanasombat, Siri@DFEH; Hawn, Jeanette@DFEH; Hermle, Lynne C.; Liburt, Joseph C.
Subject: RE: Cisco-DFEH - Stipulating to Arbitration & Hearing
Attachments: 2020.10.16 DFEH Rule 41a Notice.pdf

Carolina,

Thank you. We have filed a notice of voluntary dismissal and will mail you a copy via U.S. mail. We are re-filing in state court. Please let us know whether you will accept service of the state court complaint on behalf of Cisco.

Best,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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Sent: Friday, October 16, 2020 9:29 AM
To: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Liburt, Joseph C. <jliburt@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>
Subject: RE: Cisco-DFEH - Stipulating to Arbitration & Hearing

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Hi Melanie,

It's attached. Also, we are trying to schedule a hearing date for motions we're filing, and Judge Davila requires hearing date reservations and a representation that opposing counsel is also available on the noticed date. Are you available on **April 1, 2021 at 9 am**? Please advise. Thanks.

Best,
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Subject: RE: Cisco-DFEH - Stipulating to Arbitration

Carolina,

Please provide an unredacted copy of the arbitration agreement.

Thanks,
Melanie

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Subject: FW: Cisco-DFEH - Stipulating to Arbitration

Hi Carolina,

Can you please provide your authority for the proposition that DFEH is bound by an arbitration agreement to which it is not a party?

Best,
Melanie

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Subject: Cisco-DFEH - Stipulating to Arbitration

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Hi Janette,

As you know, we are representing Cisco in the action brought by the DFEH, *DFEH v. Cisco Systems, Inc.*, 20-cv-04374 EJD. Real party in interest John Doe has an enforceable arbitration agreement with Cisco for all claims relating to his employment with the Company. This action is squarely covered by the agreement, notwithstanding the DFEH bringing it on Doe's behalf. Please find a redacted version of the agreement attached to this email.

Cisco requests that the DFEH stipulate to immediately dismissing this action and proceeding in arbitration. Please let us know by tomorrow, October 16, 2020, whether the DFEH will so stipulate. Thank you.

Best,
Carolina

Carolina Garcia
Managing Associate
Pronouns: she/her/hers

Orrick
Silicon Valley 
T +1-650-289-7163
cgarcia@orrick.com



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EXHIBIT E

Garcia, Carolina

From: Liburt, Joseph C.
Sent: Thursday, October 22, 2020 9:09 AM
To: Proctor, Melanie@DFEH
Cc: Thanasombat, Siri@DFEH; Hawn, Jeanette@DFEH; Hermle, Lynne C.; Garcia, Carolina; Hernaez, Alexander; Esler, Andrew S.
Subject: Re: Cisco-DFEH - Meet and confer on motions

Hi Melanie,

Yes.

Best,
Joe

On Oct 22, 2020, at 9:07 AM, Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov> wrote:

Hi Joe,

Your colleague previously requested our availability for a motion to compel arbitration. Does Cisco still intend to move to compel arbitration?

Thanks,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
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Sent: Thursday, October 22, 2020 8:33 AM
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I am copying counsel for the individual defendants so they can join the call and discuss with you any motions they may have as well.

Best,
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Joe Liburt
Partner

Orrick
Silicon Valley <image001.jpg>
T +1-650-614-7447
assistant +1-650-614-7421
jliburt@orrick.com

<image004.png>

Employment Blog

<image002.jpg> <image003.jpg>
<image005.png>

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Carolina Garcia
Managing Associate
Pronouns: she/her/hers

Orrick
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T +1-650-289-7163
cgarcia@orrick.com

[<image004.png>](#)

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Garcia, Carolina

From: Garcia, Carolina
Sent: Thursday, October 22, 2020 6:58 PM
To: Proctor, Melanie@DFEH
Cc: Thanasombat, Siri@DFEH; Hawn, Jeanette@DFEH; Hermle, Lynne C.; Esler, Andrew S.; Liburt, Joseph C.; Garcia, Carolina; Jung, John; Hernaez, Alexander
Subject: RE: Cisco-DFEH - Meet and confer on motions

Hi Melanie,

Pursuant to CCP § 430.41(a), here are Cisco's bases for its demurrers:

- All causes of action: statute of limitations
- Cause of Action 1 (discrimination): Caste and ethnicity are not protected classes under the FEHA and Doe did not exhaust his required administrative remedies for religion, national origin, and color. Cal. Gov't Code § 12940(a). Additionally, the discrimination claim fails to allege facts sufficient to constitute a cause of action.
- Cause of Action 2 (harassment): Caste and ethnicity are not protected classes under the FEHA and Doe did not exhaust his required administrative remedies for religion, national origin, and color. Cal. Gov't Code § 12940(a). Additionally, the harassment claim fails to allege facts sufficient to constitute a cause of action.
- Cause of Action 3 (retaliation): The retaliation claim fails to allege facts sufficient to constitute a cause of action.
- Cause of Actions 4 & 5 (failure to prevent): The derivative failure to prevent claims fail because the freestanding discrimination, harassment, and retaliation claims fail.

Pursuant to CCP § 435.5(a), Cisco will move to strike the following for the reasons explained below, but generally the allegations below are immaterial and/or impertinent:

- All references to caste-based or ethnicity-based discrimination or harassment because neither are listed as protected classes listed under the FEHA, California Government Code § 12940(a).
 - Caste: pgs. 1, fn.1; 2:6-8; 10:12; 10:19; 12:24; 13:2; 13:15; 14:22; 16:10; 16:13; 16:17; 17:24; 17:27; 18:3; and 18:5.
 - Ethnicity: pgs. 1:24; 2:7; 2, fn.2; 3:10; 8:1; 10:14; 11:10; 11:14; 11:22; 11:28; 12:19; 13:3; 13:16; 18:19; and 18:25.
- All references to religion, national origin, or color-based discrimination or harassment because John Doe did not exhaust his administrative remedies and DFEH has no right to add unexhausted categories on his behalf.
 - Religion: 1:24; 2:6; 2, fn.2; 3:10; 10:14; 11:10; 11:14; 11:22; 11:27; 12:19; 13:3; 13:15; 18:19; and 18:24.

- National Origin: 1:24; 2:7; 2, fn.2; 3:10; 8:1; 10:14; 11:10; 11:14; 11:22; 11:28; 12:19; 13:3; 13:15-16; 18:19; and 18:24-25.
- Color: 1:24; 2:7; 2, fn.2; 3:10; 8:1; 10:14; 11:10; 11:15; 11:22; 11:28; 12:20; 13:3; 13:16; 18:19; and 18:25.
- Allegations regarding caste discrimination by non-parties against non-parties because they are immaterial and impertinent, and unduly prejudicial. See Cal. Civ. Proc. Code § 431.10(b). These allegations are located at the following pages in the Complaint: pgs. 2:10-13; 2, fns. 2; 2-6; 4:8-14; and 4, fns. 11-13.
- Allegations regarding the composition of Cisco's workforce and employment of individuals on H-1B visas as immaterial and impertinent. These allegations are located at the following pages in the Complaint: pgs. 2:14-17; 3:16-4:6; 3, fn. 7; 4, fns. 8-10.
- Allegations regarding Cisco's purported failure to "prevent, remedy, or deter" unlawful conduct against lower caste workers because they are immaterial given that this is a single plaintiff case and the DFEH does not allege any wrongdoing against any other lower caste individuals, and none of the claims allege harm suffered by any third parties. These allegations are at the following locations in the Complaint: pgs. 4:6-7 and 17:17-20.

Thanks,
Carolina

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>

Sent: Thursday, October 22, 2020 8:53 AM

To: Hernaez, Alexander <AHernaez@foxrothschild.com>; Liburt, Joseph C. <jliburt@orrick.com>

Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>

Subject: RE: Cisco-DFEH - Meet and confer on motions

I am not available this week. In any event, it would make for a more productive call if you can provide information about the proposed grounds for a demurrer/motion to strike in advance of any discussion. DFEH attorneys will coordinate our schedules and propose times for next week.

Per my inquiries to each of you last week, please let us know whether you'll accept service on behalf of your clients.

Thanks,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293

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From: Hernaez, Alexander <AHernaez@foxrothschild.com>

Sent: Thursday, October 22, 2020 8:42 AM

To: Liburt, Joseph C. <jliburt@orrick.com>; Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>

Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>

Subject: RE: Cisco-DFEH - Meet and confer on motions

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The individual defendants will be filing a motion to strike and demurrer as well. I look forward to speaking with you all. I am clear any time after 3 pm. If that does not work, please let me know.

Alex

From: Liburt, Joseph C. <jliburt@orrick.com>

Sent: Thursday, October 22, 2020 8:33 AM

To: 'Proctor, Melanie@DFEH' <melanie.proctor@dfeh.ca.gov>

Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Hernaez, Alexander <AHernaez@foxrothschild.com>; Esler, Andrew S. <aesler@foxrothschild.com>

Subject: [EXT] Cisco-DFEH - Meet and confer on motions

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Employment Blog



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Carolina

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>

Sent: Friday, October 16, 2020 8:02 AM

To: Garcia, Carolina <cgarcia@orrick.com>

Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>;

Hermle, Lynne C. <lchermle@orrick.com>; Liburt, Joseph C. <jliburt@orrick.com>

Subject: RE: Cisco-DFEH - Stipulating to Arbitration

Carolina,

Please provide an unredacted copy of the arbitration agreement.

Thanks,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Proctor, Melanie@DFEH

Sent: Thursday, October 15, 2020 1:49 PM

To: Garcia, Carolina <cgarcia@orrick.com>

Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>;

lchermle@orrick.com; Liburt, Joseph C. <jliburt@orrick.com>

Subject: FW: Cisco-DFEH - Stipulating to Arbitration

Hi Carolina,

Can you please provide your authority for the proposition that DFEH is bound by an arbitration agreement to which it is not a party?

Best,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Garcia, Carolina <cgarcia@orrick.com>

Sent: Thursday, October 15, 2020 1:18 PM

To: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>;
Wipper, Janette@DFEH <Janette.Wipper@dfeh.ca.gov>

Cc: Liburt, Joseph C. <jliburt@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Hermle, Lynne C. <lchermle@orrick.com>

Subject: Cisco-DFEH - Stipulating to Arbitration

[EXTERNAL] This email originated from outside DFEH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Janette,


As you know, we are representing Cisco in the action brought by the DFEH, *DFEH v. Cisco Systems, Inc.*, 20-cv-04374 EJD. Real party in interest John Doe has an enforceable arbitration agreement with Cisco for all claims relating to his employment with the Company. This action is squarely covered by the agreement, notwithstanding the DFEH bringing it on Doe's behalf. Please find a redacted version of the agreement attached to this email.

Cisco requests that the DFEH stipulate to immediately dismissing this action and proceeding in arbitration. Please let us know by tomorrow, October 16, 2020, whether the DFEH will so stipulate. Thank you.

Best,
Carolina

Carolina Garcia
Managing Associate

Pronouns: she/her/hers

Orrick
Silicon Valley 
T +1-650-289-7163
cgarcia@orrick.com



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For more information about Orrick, please visit <http://www.orrick.com>.

In the course of our business relationship, we may collect, store and transfer information about you. Please see our privacy policy at <https://www.orrick.com/Privacy-Policy> to learn about how we use this information.

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This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.

Garcia, Carolina

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Sent: Monday, November 2, 2020 4:36 PM
To: Garcia, Carolina; Hernaez, Alexander; Liburt, Joseph C.
Cc: Thanasombat, Siri@DFEH; Hawn, Jeanette@DFEH; Hermle, Lynne C.; Esler, Andrew S.
Subject: RE: Cisco-DFEH - Meet and confer on motions

Hi Carolina,

As you no doubt saw, we finally obtained a docket number and plan to serve the endorsed copies tomorrow. We also filed a motion for the complainant to proceed under a fictitious name. Please let us know if you had any difficulty opening any of the documents. The motion moots one of defendants' intended bases for a motion to strike. Why don't we schedule a call for a time when you've all had a chance to read through the complaint and motion papers, so we can have a more fulsome discussion?

If you would prefer to meet this week, please note that I am not available outside of business hours. I am currently available Friday morning, between 9-12. Please let me know as soon as possible whether you'd like to meet during that window. If not, please propose times for November 9-12. I am out of the office on the 13th.

Thanks,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Garcia, Carolina <cgarcia@orrick.com>
Sent: Monday, November 2, 2020 1:54 PM
To: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>; Hernaez, Alexander <AHernaez@foxrothschild.com>; Liburt, Joseph C. <jliburt@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

[EXTERNAL] This email originated from outside DFEH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Melanie,

We're available Thursday at 5 pm. Let us know if this will work for the DFEH. Thanks.

Carolina

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Sent: Monday, November 2, 2020 12:16 PM
To: Garcia, Carolina <cgarcia@orrick.com>; Hernaez, Alexander <AHernaez@foxrothschild.com>; Liburt, Joseph C. <jliburt@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

Carolina,

As you might have guessed last week, my schedule is a moving target and when I didn't hear from you by Friday afternoon, I released the time to other needs. Please propose a few times for Thursday or Friday so we can try coordinating again. I note that the Clerk's office still hasn't docketed the case, so we have plenty of time.

Thanks,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
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From: Garcia, Carolina <cgarcia@orrick.com>
Sent: Monday, November 2, 2020 11:28 AM
To: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>; Hernaez, Alexander <AHernaez@foxrothschild.com>; Liburt, Joseph C. <jliburt@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

[EXTERNAL] This email originated from outside DFEH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Melanie, we're available tomorrow at 2 pm. Please confirm and I'll circulate a dial-in. Thank you.

Best,
Carolina

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Sent: Thursday, October 29, 2020 5:08 AM
To: Garcia, Carolina <cgarcia@orrick.com>; Hernaez, Alexander <AHernaez@foxrothschild.com>; Liburt, Joseph C. <jliburt@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

Hi Carolina,

Since my last email, my schedule for the week has filled up. We are next available Tuesday from 2-3, and on the morning of November 4.

Please let us know as soon as possible whether any of those times work for you.

Thanks,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Garcia, Carolina <cgarcia@orrick.com>
Sent: Wednesday, October 28, 2020 4:47 PM
To: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>; Hernaez, Alexander <AHernaez@foxrothschild.com>; Liburt, Joseph C. <jliburt@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

[EXTERNAL] This email originated from outside DFEH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Melanie,

Thanks for your email. We are available tomorrow afternoon after 2 pm PST. If this still works for you, please confirm and specify a time. I'm happy to circulate a dial-in.

Best,
Carolina

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Sent: Monday, October 26, 2020 7:19 AM
To: Hernaez, Alexander <AHernaez@foxrothschild.com>; Liburt, Joseph C. <jliburt@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

Thank you, Alex. As soon as we receive the endorsed copy of the complaint, we will serve it on the parties at the addresses below, unless you prefer a different location:

Alexander Hernaez
Andrew Esler
Fox Rothschild LLP
345 California St, Ste 2200
San Francisco, CA 94104

Joseph C. Liburt
Lynne C. Hermle
Carolina Garcia
Orrick Herrington & Sutcliffe LLP
1000 Marsh Rd
Menlo Park, CA 94025

I am preparing for a complicated mediation on Wednesday, and am attending training the mornings of Thursday and Friday. I am currently available between 1-5pm on Thursday and Friday. Given that the court appears to be still processing our submission of the complaint, this should be plenty of time for the parties to meet and confer.

Thanks,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Hernaez, Alexander <AHernaez@foxrothschild.com>
Sent: Sunday, October 25, 2020 8:34 AM
To: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>; Liburt, Joseph C. <jliburt@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

[EXTERNAL] This email originated from outside DFEH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I will accept service on the individual defendants. Please send me a copy of the file endorsed complaint. Also, given DFEH's inability to meet with us last week, we would like to try again. All defendants are available to meet and confer on October 26, 2020 at 9:45 am or 11:45 am. If those times do not work, please suggest some other times on Monday.

Alex

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Sent: Friday, October 23, 2020 5:14 PM
To: Liburt, Joseph C. <jliburt@orrick.com>; Hernaez, Alexander <AHernaez@foxrothschild.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: [EXT] RE: Cisco-DFEH - Meet and confer on motions

Hi Joe,

We submitted the complaint on the 16th. It's our understanding that Santa Clara is backlogged right now and that the court is backdating filings as they are docketed. When we have the filed/endorsed copy, we will certainly ensure all parties receive a copy and are/have been properly served.

I still have not received an answer regarding whether Mr. Iyer and Mr. Kompalla's counsel will accept service on their behalf. We would appreciate that clarification.

Thanks,
Melanie

Melanie L. Proctor
Assistant Chief Counsel

Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Liburt, Joseph C. <jliburt@orrick.com>
Sent: Friday, October 23, 2020 9:18 AM
To: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>; Hernaez, Alexander <AHernaez@foxrothschild.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

[EXTERNAL] This email originated from outside DFEH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Melanie,

I'm just following up on my email yesterday about accepting service. Are you agreeable to deeming service on Cisco effective as of yesterday?

Also, can you confirm whether DFEH actually filed the state court complaint, and if so, when? If you have a filed/endorsed copy of it that you could send over, that would be great. Thanks.

Best,
Joe

From: Liburt, Joseph C. <jliburt@orrick.com>
Sent: Thursday, October 22, 2020 11:27 AM
To: 'Proctor, Melanie@DFEH' <melanie.proctor@dfeh.ca.gov>; Hernaez, Alexander <AHernaez@foxrothschild.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

Hi Melanie,

We will send you an email shortly setting out the grounds on both motions.

And I am authorized on behalf of Cisco to accept service of the state court complaint that DFEH filed on 10/16. Shall we agree that service is deemed to have occurred today?

Best,

Joe

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Sent: Thursday, October 22, 2020 8:53 AM
To: Hernaez, Alexander <AHernaez@foxrothschild.com>; Liburt, Joseph C. <jliburt@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

I am not available this week. In any event, it would make for a more productive call if you can provide information about the proposed grounds for a demurrer/motion to strike in advance of any discussion. DFEH attorneys will coordinate our schedules and propose times for next week.

Per my inquiries to each of you last week, please let us know whether you'll accept service on behalf of your clients.

Thanks,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Hernaez, Alexander <AHernaez@foxrothschild.com>
Sent: Thursday, October 22, 2020 8:42 AM
To: Liburt, Joseph C. <jliburt@orrick.com>; Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: RE: Cisco-DFEH - Meet and confer on motions

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The individual defendants will be filing a motion to strike and demurrer as well. I look forward to speaking with you all. I am clear any time after 3 pm. If that does not work, please let me know.

Alex

From: Liburt, Joseph C. <jliburt@orrick.com>
Sent: Thursday, October 22, 2020 8:33 AM
To: 'Proctor, Melanie@DFEH' <melanie.proctor@dfeh.ca.gov>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Hernaez, Alexander <AHernaez@foxrothschild.com>; Esler, Andrew S. <aesler@foxrothschild.com>
Subject: [EXT] Cisco-DFEH - Meet and confer on motions

Hi Melanie,

Cisco would like to meet and confer with DFEH about Cisco's planned demurrers to and motion to strike the state court complaint. Might you have any time this afternoon for a call? Also, since DFEH dismissed the federal action and filed the state court action after we inquired about stipulating to arbitration, I am inferring that DFEH's response is that it will not so stipulate, but please let me know if I am mistaken.

I am copying counsel for the individual defendants so they can join the call and discuss with you any motions they may have as well.

Best,
Joe

Joe Liburt
Partner

Orrick
[Silicon Valley](#) 
T +1-650-614-7447
assistant +1-650-614-7421
jliburt@orrick.com



Employment Blog



From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Sent: Friday, October 16, 2020 11:43 AM
To: Garcia, Carolina <cgarcia@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lchermle@orrick.com>; Liburt, Joseph C. <jliburt@orrick.com>
Subject: RE: Cisco-DFEH - Stipulating to Arbitration & Hearing

Carolina,

Thank you. We have filed a notice of voluntary dismissal and will mail you a copy via U.S. mail. We are re-filing in state court. Please let us know whether you will accept service of the state court complaint on behalf of Cisco.

Best,
Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Garcia, Carolina <cgarcia@orrick.com>
Sent: Friday, October 16, 2020 9:29 AM
To: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; Hermle, Lynne C. <lcherml@orrick.com>; Liburt, Joseph C. <jliburt@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>
Subject: RE: Cisco-DFEH - Stipulating to Arbitration & Hearing

[EXTERNAL] This email originated from outside DFEH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Melanie,

It's attached. Also, we are trying to schedule a hearing date for motions we're filing, and Judge Davila requires hearing date reservations and a representation that opposing counsel is also available on the noticed date. Are you available on **April 1, 2021 at 9 am**? Please advise. Thanks.

Best,
Carolina

From: Proctor, Melanie@DFEH <melanie.proctor@dfeh.ca.gov>
Sent: Friday, October 16, 2020 8:02 AM
To: Garcia, Carolina <cgarcia@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>;

Hermle, Lynne C. <lchermle@orrick.com>; Liburt, Joseph C. <jliburt@orrick.com>

Subject: RE: Cisco-DFEH - Stipulating to Arbitration

Carolina,

Please provide an unredacted copy of the arbitration agreement.

Thanks,

Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Proctor, Melanie@DFEH
Sent: Thursday, October 15, 2020 1:49 PM
To: Garcia, Carolina <cgarcia@orrick.com>
Cc: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>; lchermle@orrick.com; Liburt, Joseph C. <jliburt@orrick.com>
Subject: FW: Cisco-DFEH - Stipulating to Arbitration

Hi Carolina,

Can you please provide your authority for the proposition that DFEH is bound by an arbitration agreement to which it is not a party?

Best,

Melanie

Melanie L. Proctor
Assistant Chief Counsel
Department of Fair Employment and Housing
Telephone: (916) 582-6764
Fax: (888) 382-5293
Pronouns: she, her, hers

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From: Garcia, Carolina <cgarcia@orrick.com>
Sent: Thursday, October 15, 2020 1:18 PM
To: Thanasombat, Siri@DFEH <Siri.Thanasombat@dfeh.ca.gov>; Hawn, Jeanette@DFEH <Jeanette.Hawn@dfeh.ca.gov>;
Wipper, Janette@DFEH <Janette.Wipper@dfeh.ca.gov>
Cc: Liburt, Joseph C. <jliburt@orrick.com>; Garcia, Carolina <cgarcia@orrick.com>; Hermle, Lynne C.
<lchermle@orrick.com>
Subject: Cisco-DFEH - Stipulating to Arbitration

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Hi Janette,

As you know, we are representing Cisco in the action brought by the DFEH, *DFEH v. Cisco Systems, Inc.*, 20-cv-04374 EJD. Real party in interest John Doe has an enforceable arbitration agreement with Cisco for all claims relating to his employment with the Company. This action is squarely covered by the agreement, notwithstanding the DFEH bringing it on Doe's behalf. Please find a redacted version of the agreement attached to this email.

Cisco requests that the DFEH stipulate to immediately dismissing this action and proceeding in arbitration. Please let us know by tomorrow, October 16, 2020, whether the DFEH will so stipulate. Thank you.

Best,
Carolina

Carolina Garcia
Managing Associate
Pronouns: she/her/hers

Orrick
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T +1-650-289-7163
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